

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF DELAWARE

IN THE MATTER OF THE JOINT APPLICATION)
OF SOUTHERN SHORES WATER COMPANY,)
L.L.C., AND TIDEWATER UTILITIES, INC.,)
FOR THE ABANDONMENT OF SERVICE BY) PSC DOCKET NO. 04-CPCN-12
SOUTHERN SHORES WATER COMPANY, L.L.C.,) (BAYSIDE AMERICANA)
PURSUANT TO 26 DEL. C. § 203A, AND THE)
ISSUANCE OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO PROVIDE)
WATER SERVICES TO THE BAYSIDE)
AMERICANA DEVELOPMENT, BALTIMORE)
HUNDRED, SUSSEX COUNTY, DELAWARE, TO)
TIDEWATER UTILITIES, INC.)
(FILED JUNE 10, 2004))

ORDER NO. 6465

**CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
TO PROVIDE PUBLIC WATER UTILITY SERVICES**

This 31ST day of August, 2004, the Commission finds, determines,
and Orders the following:

I. BACKGROUND

1. Tidewater Utilities, Inc. ("Applicant" or "Tidewater"), is a water utility providing water services for public use that are subject to the regulatory jurisdiction of this Commission over any expansion of its service territory. On June 10, 2004, the Applicant filed an Application ("Application") with the Commission seeking a Certificate of Public Convenience and Necessity ("CPCN") to expand its facilities and operations in order to provide water services to the Bayside Americana Development, Baltimore Hundred, Sussex County, Delaware ("Proposed Service Area"), as specifically described by the tax parcel number identifications in paragraph 6 of the Application.

2. Southern Shores Water Company, L.L.C. ("Southern Shores"), a subsidiary of Tidewater, currently holds the CPCN for the area but is not yet offering service. A duly notarized letter dated June 8, 2004 requests permission for Southern Shores to abandon its CPCN contingent upon the CPCN being awarded to Tidewater. The notarized letter fulfills the statutory requirement for abandonment of a CPCN (26 Del. C. § 203A(c)(2)).

3. There are a total of sixty-eight parcels included in the Proposed Service Area, and two landowners of record. The Application includes petitions signed by both parcel owners, and signed waivers by both landowners of their right to "opt-out" of the Proposed Service Area. Because of the unique situation with this CPCN Application (a subsidiary of the Applicant currently holds the CPCN for this service area) Staff allowed this, as permitted by 26 Del.C. § 203C(g)(2), as an alternate means of demonstrating compliance with the notification requirements set forth in 26 Del.C. § 203C(e)(1).

4. Staff directed the Applicant to publish notice of the Application for a CPCN and Southern Shores request for abandonment in two newspapers of general circulation. The notice informed the public that any meritorious request for a hearing or objection must be filed with the Commission no later than thirty days from the publication, and informed the public of Southern Shore's intent to abandon its CPCN. The notice was published in the Delaware State News newspaper on July 14, 2004, and in The News Journal newspaper on July 15, 2004.

5. The Commission did not receive any request for a hearing on the application, nor any objection to the application.

II. SUMMARY OF THE EVIDENCE

6. The record in this matter consists of the Application, including Applicant's request that the Commission proceed in this matter under the informal fact-finding procedures set forth in 29 Del. C. § 10123 (¶ 3). In addition, the Application includes:

- (i) petitions signed by both landowners within the Proposed Service Area (¶ 1(d));
- (ii) signed documents by both landowners waiving their right to opt out of the Proposed Service Area in lieu of the supporting documentation required by 26 Del.C. § 203C(e)(1) (¶ 5);
- (iii) the County tax parcel identification numbers of the properties in the Proposed Service Area (¶ 6);
- (iv) a listing of the landowners of record of each of the parcels included in the Proposed Service Area and the tax maps locating the parcels (¶ 7); and
- (v) the Applicant's statement that its expansion of service to the parcels in the Proposed Service Area will comply with the water pressure requirements of 26 Del. C. § 403(a)&(b), and is not barred by any of the restrictions set forth in 26 Del. C. § 403(c) (¶ 8 (a)-(d));

7. The record also contains:

- (i) affidavits of publication of the public notice of the Application in the Delaware State News and The News Journal newspapers on July 14 and July 15, 2004, respectively;
- (ii) Staff's correspondence to representatives of the Office of Drinking Water of the Division of Public Health, the Office of the State Fire Marshal, and the Department of Natural Resources and Environmental Control in which Staff requested that any written comments on the application be submitted to the Commission by July 13, 2004;

- (iii) Correspondence from the Office of Drinking Water of the Division of Public Health (dated July 13, 2004) reporting that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (iv) Correspondence from the Office of the State Fire Marshal (dated July 12, 2004) stating that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN;
- (v) Printed e-mail correspondence from the Department of Natural Resources and Environmental Control (dated July 12, 2004) stating that they have no outstanding issues with the Applicant that might preclude granting the requested CPCN. This statement was provided after initial concerns regarding water supply adequacy in the Proposed Service Area were addressed between the Agency and the Applicant;
- (v) A duly notarized letter dated June 8, 2004 from Southern Shores requesting to abandon their CPCN contingent upon a CPCN being granted to Tidewater;
- (vi) Staff's August 20, 2004 memorandum of its investigation and its recommendation that the Commission grant Southern Shores request to abandon its CPCN, and grant Tidewater Utilities, Inc., a CPCN to provide water services to the Bayside Americana Development. Staff notes that based upon its review, the Applicant has complied with all the statutory and regulatory requirements necessary for granting the CPCN, and that Southern Shores has complied with the regulatory requirements for abandoning its CPCN.

8. Finally, the record does not contain any evidence that any person objects to the application or requests a hearing.

III. FINDINGS OF FACT & CONCLUSIONS OF LAW

9. The Commission has jurisdiction to grant the abandonment and issuance of a CPCN permitting a water utility to end its water service in order that another utility may expand its operations and facilities. The Applicant and Southern Shores operate water systems for public use and, consequently, are water utilities.

10. First, the Applicant obtained the consent of both landowners of the property within the Proposed Service Area in compliance of 26 Del. C. § 203C(e)(1)(b). Second, the Applicant submitted documents signed by both property owners waiving their right to "opt-out" of the Proposed Service Area. Third, the record reflects: (a) no objection to this application; (b) no request for a hearing on this application; (c) the Applicant's statement that the Applicant will continue to meet the water pressure requirements for its existing customers; and (d) the Applicant's statement that it is not subject to any regulatory Order or finding pertaining to the quality of its service to existing customers which would preclude it from expanding its operations or facilities.

11. The Commission's Staff has investigated the Applicant and has not discovered that the Applicant is currently subject to any Commission finding that the utility is unwilling or unable to provide adequate and reliable water services to its existing customers. The present record does not provide any basis for the Commission to believe that any further investigation into the Applicant's service quality is necessary in order to render a decision in this proceeding.

12. In summary, the Applicant has submitted the necessary proof required by the provisions of 26 Del. C. §§ 203C(e)(1), 203C(e)(1) b., & 203C(e)(3) (2002 Supp.), which the Commission's Staff has reviewed and found to be accurate. The Commission also finds no reason that the Applicant is not entitled to a CPCN under the provisions of either 26 Del. C. §§ 203C(f) or 203C(i) (2002 Supp.). Since the Applicant has satisfied the statute's requirements, the Commission shall issue a CPCN permitting Southern Shores to abandon its CPCN and allow the Applicant to expand its operations to provide water utility services to the parcels identified in Exhibit "A" hereto.

Now, therefore, **IT IS ORDERED:**

1. That, pursuant to 26 Del. C. § 203C(e) (2002 Supp.), the application for a Certificate of Public Convenience and Necessity, as filed in PSC Docket No. 04-CPCN-12, is hereby approved to the extent it is consistent with this Order, and the CPCN issued to Southern Shores Water Company, L.L.C., is hereby abandoned and a CPCN is granted to Tidewater Utilities, Inc., to serve the area identified by the tax parcel numbers set forth in Exhibit "A" to this Order.

2. That Tidewater Utilities, Inc., shall comply with any and all federal, state, county, and local statutes, ordinances, orders, regulations, rules, and permit conditions that are applicable, or may become applicable, to any matter involving water utility services provided to the service territory granted by this Certificate of Public Convenience and Necessity.

3. That the Commission reserves the jurisdiction and authority to enter such further Orders in this matter as may be deemed necessary or proper.

BY ORDER OF THE COMMISSION:

/s/ Arnetta McRae
Chair

/s/ Joshua M. Twilley
Vice Chair

/s/ Joann T. Conaway
Commissioner

/s/ Donald J. Puglisi
Commissioner

/s/ Jaymes B. Lester
Commissioner

ATTEST:

/s/ Karen J. Nickerson
Secretary

E X H I B I T "A"

**APPROVED SERVICE AREA
PARCELS WITHIN CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY**

**BAYSIDE AMERICANA DEVELOPMENT
BALTIMORE HUNDRED
SUSSEX COUNTY, DELAWARE**

SUSSEX COUNTY TAX MAP PARCELS NOS.

5-33-12.00-365.00	5-33-19.00-48.02
5-33-19.00-16.00	5-33-19.00-49.00
5-33-19.00-16.01	5-33-19.00-56.03
5-33-19.00-17.00	5-33-19.00-291.00
5-33-19.00-17.01	5-33-19.00-291.01
5-33-19.00-17.02	5-33-19.00-292.00
5-33-19.00-18.00	5-33-19.00-294.01
5-33-19.00-33.00	5-33-19.00-294.02
5-33-19.00-36.00	5-33-19.00-295.00
5-33-19.00-37.00	5-33-19.00-296.00
5-33-19.00-38.00	5-33-19.00-298.00
5-33-19.00-39.00	5-33-19.00-298.01
5-33-19.00-40.00	5-33-19.00-298.02
5-33-19.00-40.01	5-33-19.00-298.03
5-33-19.00-40.02	5-33-19.00-299.00
5-33-19.00-41.00	5-33-19.00-299.01
5-33-19.00-41.01	5-33-19.00-299.02
5-33-19.00-41.02	5-33-19.00-299.03
5-33-19.00-43.00	5-33-19.00-300.00
5-33-19.00-48.00	5-33-19.00-301.00

5-33-19.00-301.01

5-33-19.00-636.00

5-33-19.00-301.02

5-33-19.00-637.00

5-33-19.00-301.03

5-33-19.00-301.04

5-33-19.00-301.05

5-33-19.00-301.06

5-33-19.00-302.00

5-33-19.00-303.00

5-33-19.00-304.00

5-33-19.00-618.00

5-33-19.00-619.00

5-33-19.00-620.00

5-33-19.00-621.00

5-33-19.00-622.00

5-33-19.00-623.00

5-33-19.00-624.00

5-33-19.00-626.00

5-33-19.00-627.00

5-33-19.00-628.00

5-33-19.00-629.00

5-33-19.00-630.00

5-33-19.00-631.00

5-33-19.00-632.00

5-33-19.00-633.00

5-33-19.00-634.00

5-33-19.00-635.00